IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 3RD APRIL 2007 / 13TH CHAITHRA 1929

MACA.No. 2121 of 2005() & Cross Objection No.80/06

(OP(MV) 874/99 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL,THALASSERY)

: APPELLANT/PETITIONER

C.SHAMEER, S/O.P.P.KHADER,
MADATHIL HOUSE, KOTTAM, P.O.MUNDALOOR,
VIA. KADACHIRA.

BY ADV. SRI.M.SASINDRAN

RESPONDENTS:

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1. K.C.GEETHA, W/O.MOHANAN,
POURNAMI, ATTADAPPA.P.O,
KANNUR.

2. MOUVANCHERI GOPALAN,
KOTTAYI HOUSE, KUTHUPARAMBA AMSOM,
MOORIYAD DESOM, P.O.KUTHUPARAMBA.

3. THE ORIENTAL INSURANCE CO. LTD.,
KANNUR.

BY ADV. SRI.VPK.PANICKER FOR R3

THIS MOTOR ACCIDENT CLAIMS APPEAL & CROSS OBJECTION HAVING BEEN FINALLY HEARD ON 3-4-2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.r.Raman & Antony Dominic, JJ.
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M.A.C.A.No.2121 of 2005
&
Cross Objection No.80/06
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Dated this the 3rd day of April, 2007.

JUDGMENT

Raman,J.

This is an appeal filed by the claimant seeking enhancement of compensation as awarded by the Motor Accidents Claims Tribunal, Thalassery in O.P.(MV) No.874 of 1999. The claimant is an injured aged 21 years at the time of the accident. He was a Salesman in a Store at Pune having a monthly salary of Rs.6,100/-. He was a pillion rider in a scooter bearing registration No.KL-13/A 5233 driven by his cousin Ashraf, which met with an accident on 2.8.1998, when a bus bearing registration No.KL-13/B 1607 driven by the second respondent hit against the scooter. It is alleged that the accident has occurred as a result of the negligence on the part of the bus driver. In the accident, the appellant suffered various injuries, namely, (1) compound comminuted fracture to both bones of right leg with partial degloving of right leg and foot drop on right sider, (2) comminuted displaced fracture of right tibia, (3) segmental fracture to right fibula,

(4) lacerated wound 2 x 3 cms. upper third of right leg, (5) lacerated wound 2 x 2 cms. antero-lateral aspect of lower third of right leg, (6) lacerated wound over posterior aspect of middle third 5 x 5 cms. and (7) numbness over sole of right foot. He was taken to A.K.G. Hospital, Kannur and from there he was taken to Unity Health Complex, Mangalore. He was treated there as an inpatient from 3.8.1998 to 26.10.1998. He was thereafter also admitted in the same Hospital on 2.12.1998 for skin grafting.

2. He claimed a total amount of Rs.5,00,000/- as compensation under various heads. Respondents 1 and 2, owner and driver of the bus remained ex parte. The claim was contested by the third respondent – Insurance Company. The evidence consists of oral testimony of PW1 and Exts.A1 to A17.

3. The court below, after analysing the evidence, found that the accident occurred as a result of the rash and negligent driving of the bus driver. Proceeding further, by quantifying the compensation due and payable, the Tribunal awarded a total amount of Rs.3,02,400/- from the respondents jointly and severally payable by the Insurance Company with interest at 9% per annum from the date of petition till realisation.

4. Even though disability certificate – Ext.A9 was produced,

which showed that the disability is at 35% to the limp, the Tribunal took only 15% and determined the compensation towards disability and an amount of Rs.1,22,400/- was awarded under this head. The main challenge in this appeal is regarding compensation awarded under this head inter alia contending that it is too low. At the time of admission, this Court directed the injured to be examined by a Medical Board. Subsequent to the examination, a certificate was issued by the Medical Board attached to the Medical College Hospital, Calicut wherein the percentage of permanent disability is assessed at 10%. The Insurance Company has filed a Cross Objection wherein under ground No.7, it is urged that the compensation awarded by the Tribunal under this head is in excess. In view of the certificate issued by the Medical Board, assessing the disability at 10%, we have to hold that the permanent disability found by the Tribunal at 15% is in excess. We reduce the percentage of disability to 10% and on a re-calculation of the amount awardable under this head, it will come to Rs.81,600/- applying the same standard as against Rs.1,22,400/-. Thus, we reduce the amount by Rs.40,800/-.

5. In the appeal memorandum, though the appellant would claim that he is entitled to compensation under other heads, we find that the court below has awarded a reasonable compensation under

various heads, we do not find any reason to enhance the compensation as fixed by the Tribunal.

6. Even though it is contended that the compensation of Rs.7,500/- awarded by the Tribunal for pain and suffering is too low, considering the period during which the appellant was an inpatient for 194 days, we cannot forget the fact that the Insurance Company had a strong case that even before the accident in question, he had some disability. At any rate, in the absence of any dispute regarding the number of days during which he remained as an inpatient, the compensation has to be considerably increased and we fix an amount of Rs.20,000/- as compensation for pain and suffering in the place of Rs.7,500/- as awarded by the Tribunal. Thus an additional compensation of Rs.12,500/- is awarded.

7. The Insurance Company in the Cross Objection has raised a contention that the income assessed by the Tribunal at Rs.4,000/- is not correct. The appellant was receiving a salary of Rs.6,100/- and Ext.A12 salary certificate was produced. It is true that Ext.A12 was not properly proved. The Tribunal has not accepted the salary certificate as such and has fixed the income at Rs.4,000/-. In the absence of any better materials available, we do not want to disturb this finding. In the result, the appellant will be entitled only for an

amount of Rs.2,74,100/- as against the amount of Rs.3,02,400/-, which will carry interest as awarded by the Tribunal.

Appeal and the Cross Objection are disposed of as above.

P.R.Raman,
Judge.

Antony Dominic
Judge.

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